

arrangement other than contributions described in subparagraph (B).

"(D) DEFINITIONS AND SPECIAL RULE.—

"(i) DEFINITIONS.—For purposes of this paragraph, any term used in this paragraph which is also used in section 408(n) shall have the meaning given such term by such section.

"(ii) COORDINATION WITH TOP-HEAVY RULES.—A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year."

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NON-DISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions)

is amended by redesignating paragraph (10) as paragraph (11) and by adding after paragraph (9) the following new paragraph:

"(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11).

"(B) meets the exclusive plan requirements of subsection (k)(11)(C); and

"(C) meets the vesting requirements of section 408(n)(3)."

(c) EFFECTIVE DATE.—The amendments made by this section 26 use 401 note. shall apply to plan years beginning after December 31, 1996.

### Subchapter B—Other Provisions

#### SEC. 1426. TAX-EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).

(a) IN GENERAL.—Subparagraph (B) of section 401(k)(4) is amended to read as follows:

"(B) ELIGIBILITY OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—

"(i) TAX-EXEMPTS ELIGIBLE.—Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

"(ii) GOVERNMENTS INELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an

employer  
described in clause (iii).

(iii) TREATMENT OF INDIAN TRIBAL  
GOVERN-  
MENTS.—An employer which is an Indian  
tribal govern-  
ment (as defined in section 7701(a)(40)), a  
subdivision  
of an Indian tribal government (determined  
in accord-  
ance with section 7871(d)), an agency or  
instrumental-  
ity of an Indian tribal government or  
subdivision  
thereof, or a corporation chartered under  
Federal  
State, or tribal law which is owned in  
whole or in